

(915) 323-7713

August 3, 1981

Attention: Mr. .
Assistant Assessor

Dear

Change of Ownership

This is in response to your letter dated July 15, 1981, addressed to our Assistant Chief Counsel, Glenn Rigby. You ask if a change of ownership exclusion should be recognized under Section 62(a) and (b) of the Revenue and Taxation Code when a father's quitclaim deed to his son is asserted to be merely a conveyance to make record of a prior ownership agreement.

I understand from the documents we received with your letter that the property was acquired by grant deed on December 21, 1977, by Stacy and Jeanette. Thereafter, on March 17, 1981, they conveyed by quitclaim deed one-half interest in the property to their son, Stacy Jr. Stacy, Jr. asserts the quitclaim deed was merely to correct the title on the property to show his one-half ownership interest.

Stacy, Jr. asserts his proof of ownership dating back to the grant deed to his father in 1977 is shown by Stacy, Jr.'s check to the title company at the time and in the amount necessary to close escrow on the property. He further shows a document entitled "Statement" which is a signed agreement by his mother, father, and himself in which they agreed that the property is owned one-half by mother and father and one-half by Stacy, Jr. Notwithstanding this documentation, we are of the opinion that it does not constitute proof of prior ownership in Stacy of one-half of the property. At best, it constitutes a document in which the parties contractually agree that Stacy, Jr. is to receive one-half of the property. The reason for this conclusion is as follows.

A property is conveyed only by a deed or by operation of law. For the most part, you will find property being conveyed by a deed. A conveyance by operation of law occurs infrequently and involves the conveyance of property by a court order in settlement of a dispute or other situations where the owner cannot or will not convey the property. Therefore, we will restrict our discussion herein to property which is conveyed by deed only.

A deed is a written instrument that conveys or transfers title to real property. It must be written, executed by the grantor, and delivered to and accepted by the grantee (Civil Code, §§ 1091, 1054; Civil Code of Procedure, § 1033; Marshall v. Marshall, 140 Cal. App. 2d 475). In addition, the deed must be delivered by the grantor under circumstances that demonstrates that he intends to presently, irrevocably, and unconditionally divest himself of title to the property at the time he delivers the deed to the grantee or to some third person (Civil Code § 1056).

For that abbreviated background, let me explain and discuss the documentation alleged to give Stacy, Jr. one-half interest in the property in 1977. First, the "Statement" is not dated and therefore the time for which it is to be effective cannot be determined. Next, words of conveyance are not used. Words of conveyance must be used, such as "I grant my interest to X", or "I convey my interest to X", or other such words which unequivocally depict an intent to convey the property. Next, the document is not notarized and therefore cannot be recorded as a conveyance document. (See Civil Code § 1170 which requires conveyance documents be acknowledged in order to be recorded; Farmers Exchange Bank of San Fernando v. Purdy, 130 Cal. 455.)

At best, I see the document as one in which the parties contractually agree to share the benefits of ownership of the property. It could be used in court to support a quiet title action in which the court could be asked to convey one-half interest in the property to Stacy, Jr., but the document on its face does not convey the one-half interest in the property to Stacy, Jr. This conclusion is supported by the observation that if the document did so convey the one-half interest to Stacy, Jr. as claimed, then the later quitclaim deed from his father would be entirely unnecessary. That contrary document illustrates the fact that the parties recognized that ownership of the property was in Stacy, Sr. and his wife and that further conveyance documentation was needed in order that Stacy, Jr. was to receive one-half ownership.

Furthermore, the evidence of Stacy, Jr.'s check in the amount to close escrow could well have been a private loan from Stacy, Jr. to his father, Stacy, Sr. There is simply no way under the circumstances to determine exactly what the agreement was. Customarily, parties do not obtain interest in property without using formal recorded documents depicting their ownership interest.

Stacy, Jr.'s assertion that the change of ownership exclusion should be upheld by Section 62(a) of the Revenue and Taxation Code appears to be ill founded. Section 62(a) presumes the clear existence of co-owners. Then subsequently the property title is changed to show the property to be held by some other method but by the same parties in the same proportional interest. Since Stacy, Jr. was never shown to be a co-owner in the first instance, then Section 62(a) does not apply.

Stacy, Jr.'s assertion that Section 62(b) of the Revenue and Taxation Code affords ownership change exclusion is also ill founded. That section applies only when property ownership interests are conveyed for the purpose of providing security of the property financing. There is no evidence here to show that Stacy, Jr. was taking ownership in the property for security of a loan.

Situations such as this are becoming more common. You will be asked to recognize various documentation secretly held by parties asserting that the public ownership records do not truly reflect the true state of the ownership of the property. Your acceptance or rejection of such documents of course does not establish ownership. Your power to determine when a property changes ownership extends only to decide whether or not a reappraisal of the property should be made for the basis of determining a measure of property tax. You are allowed great discretion in this regard. However, you should be guided by the law regarding when and how property is conveyed. As discussed above, you will note that conveyance of property is a very formal procedure. Therefore, we suggest you adhere to a conservative viewpoint in recognizing exclusions to the change of ownership of property. Where parties assert unrecorded secretly-held documents constitute conveyance of property, we suggest you recognize such conveyances only when such documents satisfy the formality of a deed and where all signatures are formally acknowledged by a notary public or other person with such authority such that the documents could be legally recorded. You could presume that any person truly intending to convey property would have drawn up such documentation. So you would be well within bounds of good reasoning to reject the authenticity of instruments of lesser formality.

Mr.

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In any event the burden of proof is upon the taxpayer. If you are not reasonably persuaded of the truth of the taxpayer's assertion, then you are well within your discretionary power to deny a taxpayer's assertion of change of ownership.

Very truly yours,

Robert R. Keeling
Tax Counsel

RRK:fr

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section

220.0582 **Record Title.** Anyone claiming that title to real property is other than as shown on a recorded deed or other instrument of title has the burden of proof of proving that claim. The proof required by Evidence Code section 662 is proof that is clear and convincing, which has been defined as "clear, explicit and unequivocal," "so clear as to leave no doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." The submission of an unexecuted partnership income tax return showing an ownership interest in real property, by itself, is insufficient evidence to overcome the presumption that the persons named on the deed are the property owners. C 3/16/88. (M99-2)